

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Simon Wang	Team: Squad #10	CCRB Case #: 201604078	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 05/05/2016 5:30 AM	Location of Incident: Kings Highway and Snyder Avenue	Precinct: 67	18 Mo. SOL 11/5/2017	EO SOL 11/5/2017	
Date/Time CV Reported Fri, 05/06/2016 5:50 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 05/12/2016 10:54 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. DT1 James Mccafferty	03008	883339	DB BSHM
2. DT3 Michelle Morra	3241	946036	070 DET

Officer(s)	Allegation	Investigator Recommendation
A.DT1 James Mccafferty	Abuse: Detective James Mccafferty stopped the vehicle in which § 87(2)(b) was an occupant.	
B.DT1 James Mccafferty	Abuse: Detective James Mccafferty threatened § 87(2)(b) with the use of force.	
C.DT1 James Mccafferty	Abuse: Detective James Mccafferty threatened to arrest § 87(2)(b)	
D.DT1 James Mccafferty	Abuse: Detective James Mccafferty drew his gun.	
E.DT1 James Mccafferty	Abuse: Detective James Mccafferty threatened to damage § 87(2)(b)'s property.	
F.DT1 James Mccafferty	Abuse: Detective James Mccafferty refused to provide his name to § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		

### Case Summary

On May 6, 2016, § 87(2)(b) filed the following complaint with IAB. On May 12, 2016, this complaint was received at the CCRB via referral number 16-16445. On May 5, 2016, at approximately 5:30 a.m., § 87(2)(b) was driving to work when he stopped at a red light at the intersection of King's Highway and Snyder Avenue in Brooklyn. Two officers identified by the investigation as Detective James McCafferty of Brooklyn South Homicide and Detective Michelle Morra of the 70<sup>th</sup> Precinct Detective Squad approached § 87(2)(b)'s vehicle on foot (**Allegation A**). Det. McCafferty allegedly threatened to drag § 87(2)(b) out of the car and to the stationhouse (**Allegations B and C**). § 87(2)(b) reached towards his glove compartment to retrieve his registration and insurance, and Det. McCafferty allegedly reacted by pulling out his gun (**Allegation D**). § 87(2)(b) was filming video using his cell phone, with the camera's flash light activated. Det. McCafferty and Det. Morra both repeatedly asked § 87(2)(b) not to shine the light in their eyes because they could not see. After two requests, Det. McCafferty said to § 87(2)(b) "If you put that in my face one more time, I'm going to break it. Do you understand?" (**Allegation E**). Later in their interaction, § 87(2)(b) asked Det. McCafferty, "Officer what's your name please?" Det. McCafferty allegedly did not provide his name (**Allegation F**). Despite multiple requests by both Det. McCafferty and Det. Morra, § 87(2)(b) never provided identification, registration or insurance. § 87(2)(b) was released without any summonses or arrest. § 87(2)(g), § 87(4-b)

§ 87(2)(b) recorded cell phone video of the incident, beginning at an unknown point in the incident and continuing until after the officers departed. § 87(2)(b) played the video during his CCRB interview and allowed it to be recorded by the CCRB from his phone.

This case is being submitted more than 90 days after its receipt at the CCRB due to the difficulty in identifying the subject officers. There were no 911 calls, radio transmissions, or police documents generated for this incident. The officers could only be identified after the undersigned viewed photographs of hundreds of officers in the computer database and comparing them to the faces of the officers in the video. There were further delays in scheduling Det. McCafferty due to his vacation. Det. Morra could not be identified by viewing photographs alone, and was identified by Det. McCafferty during his CCRB interview on August 10, 2016.

### Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint § 87(2)(b).
- As of August 11, 2016, an enquiry to the Office of the New York City Comptroller indicated that no notice of claim was filed for this incident (**Board Review 1**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### Civilian and Officer CCRB Histories

- This is the first and only CCRB complaint filed by § 87(2)(b) (**Board Review 3**).

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- Det. Mccafferty has had four other complaints involving four allegations made against him in his 32 year tenure at the NYPD. None of the allegations have been substantiated, § 87(2)(g) (Board Review 4).
- Det. Morra has had two other complaints, involving four allegations made against her in her 8 year tenure at the NYPD. None of the allegations have been substantiated, § 87(2)(g) (Board Review 5).

### Potential Issues

- § 87(2)(g) did not know the names of either officer and there was no arrest or summons generated. There were also no radio transmissions or 911 calls made during this incident. The only information by which to identify the officers came from the grainy cell phone footage which showed the faces of the officers. § 87(2)(g)
- Only after Det. Mccafferty was interviewed was Det. Morra identified. This incident occurred within the confines of the 67<sup>th</sup> Precinct, but the subject officers were eventually identified as detectives assigned to Brooklyn South Homicide squad and the 70<sup>th</sup> Precinct detectives squad.

### Findings and Recommendations

#### Allegations not Pleaded

- **Abuse of Authority** – § 87(2)(g)

#### Explanation of Subject Officer Identification

- Det. Mccafferty and Det. Morra both admitted to interacting with § 87(2)(b) and § 87(2)(b)'s cell phone video show them as the subject officers.

#### **Allegation A – Abuse of Authority: Detective James Mccafferty stopped the vehicle in which § 87(2)(b) was an occupant.**

§ 87(2)(b) stated that he was stopped at a red light on his way to work when he was approached by Det. Mccafferty and Det. Morra on foot. § 87(2)(b) had not observed from where the detectives came and did not see their vehicle. In his CCRB interview (Board Review 6), § 87(2)(b) stated that “to the best of my recollection,” he did not knowingly commit any traffic infractions while driving. In their CCRB interviews, both Det. Mccafferty (Board Review

7) and Det. Morra (**Board Review 8**) stated that they were driving to an appointment as part of a homicide investigation when they observed § 87(2)(b)'s vehicle making rapid lane changes, passing vehicles by crossing double yellow lines and driving at high speeds. Both officers stated that by driving in such a manner, § 87(2)(b) committed numerous traffic infractions including speeding and driving on the wrong side of the road.

Det. McCafferty was driving the unmarked patrol car and stated that his intention in pulling § 87(2)(b) over was not only to reprimand him for reckless driving, but also to investigate his erratic driving because such driving led him to believe that § 87(2)(b) may have been fleeing a crime scene. The police vehicle did not have any emergency lights, so Det. McCafferty followed § 87(2)(b) until he stopped at a traffic light and approached his vehicle on foot. Once he approached § 87(2)(b)'s vehicle, Det. McCafferty saw that § 87(2)(b) was in a work uniform and concluded that he was likely in a rush on his way to work. After § 87(2)(b) was uncooperative with providing identification and because Det. McCafferty and Det. Morra were on their way to an important appointment for a homicide investigation, they decided to use their discretion and released § 87(2)(b) without any summonses.



201604078\_20160523\_1502\_DM.mp4

In the video recorded by § 87(2)(b) § 87(2)(b) could be heard asking Det. McCafferty for the reason he was stopped. Det. McCafferty informed § 87(2)(b) that he was stopped for “driving on the wrong side of the road.” § 87(2)(b) responded by asking, “Do you have any proof?” However, in the video, § 87(2)(b) never denied that he committed any traffic infractions. Throughout the video of the interaction, § 87(2)(b) refused to provide any identification and stated that the officers had no authority to ask for identification, issue any summonses or arrest him.

§ 87(2)(g)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Allegation B – Abuse of Authority: Detective James McCafferty threatened § 87(2)(b) with the use of force.**

**Allegation C – Abuse of Authority: Detective James McCafferty threatened to arrest § 87(2)(b)**

§ 87(2)(b) (**Board Review 6**) alleged that when Det. McCafferty approached, he immediately said, “License and registration, I’ll pull you out, drag you on the asphalt to the stationhouse. Do you understand? Do you understand? License and registration.”

Det. McCafferty (**Board Review 7**) stated that he approached § 87(2)(b) and identified himself by name and stated that he was an NYPD detective. He then asked § 87(2)(b) why he was driving in such a manner and asked for his license and registration, which § 87(2)(b) refused to provide. Det. McCafferty stated that after repeated refusals by § 87(2)(b) to provide his license



§ 87(2)(b) inside the vehicle and she did not see Det. McCafferty either place his hand on his holster or remove his gun.

According to the video recorded by § 87(2)(b) (see above video file), the camera was pointed at § 87(2)(b)'s lap when § 87(2)(b) first accused Det. McCafferty of drawing his gun. No part of Det. McCafferty's body was visible at that time in the video. Det. McCafferty repeatedly denied to § 87(2)(b) that he drew his gun, at one point stating to § 87(2)(b) "It's right here" while indicating to his hip. § 87(2)(b) told Det. McCafferty that the video recorded him pulling his gun. However, at no point did the video show Det. McCafferty drawing his firearm or holding his firearm.

According to the decision in PD v. Gliner, OATH Index No. 955/00 (2000) (**Board Review 9**) an officer may draw his firearm and point it at another individual if they have a reasonable fear for their own safety or another person's safety. The determination as to when that exercise of discretion rises to the level of misconduct must be made by assessing the reasonableness of the officer's actions in the totality of the surrounding circumstances.

§ 87(2)(g)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Allegation E – Abuse of Authority: James McCafferty threatened to damage § 87(2)(b)'s property.**

This incident occurred at approximately 5:30 a.m., during the morning twilight hours. As seen in the video (see above video file), the sky was dark and the flashlight on § 87(2)(b)'s cell phone was active throughout the recording of the video. At approximately 55 seconds into § 87(2)(b)'s recording, while the camera was trained on Det. McCafferty's face, and the camera light could be seen illuminating his face, Det. McCafferty stated, "I can't see! I can't see! Turn the light out of my face." The camera was then turned away towards the dashboard of § 87(2)(b)'s car. As the incident continued, the camera was at times directed back towards Det. McCafferty and Det. Marro. Four minutes and 11 seconds into the recording, the camera was again directed at Det. McCafferty's face with the light on. Det. McCafferty stated, "Please. Get that out of my... I can't see." § 87(2)(b) complied and Det. McCafferty responded, "Thank you very much." Five minutes and three seconds into the recording, the camera was again directed at Det. McCafferty's face with the light illuminated. Det. McCafferty stated, "If you put that in my face one more time, I'm going to break it. Do you understand?" § 87(2)(b) responded by asking, "Are you threatening me officer?" Det. McCafferty replied, "Yes." In the video, the light was also shined in Det. Morra's face at times, and Det. Morra did also tell § 87(2)(b) that she could not see and asked him to turn the light away.

In his CCRB interview (**Board Review 7**), the video recorded by § 87(2)(b) was played for Det. McCafferty who did not dispute that he made those comments to § 87(2)(b) Det.



§ 87(2)(g), § 87(4-b)

[REDACTED]

Squad: 10

Investigator: \_\_\_\_\_ Simon Wang \_\_\_\_\_ 08/19/16  
Signature Print Date

Squad Leader: \_\_\_\_\_ \_\_\_\_\_ \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_ \_\_\_\_\_ \_\_\_\_\_  
Title/Signature Print Date